(Spl. - H.C.A.S. C.D., 78-e)
FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI – GOA
APPELLATE SIDE
WRIT PETITION NO. 450 OF 2004

Office Notes, Office Memoranda of Quorum appearances, Court's orders, or directions and Registrar's orders.	Court's or Judge's Orders.

Mr. S.G. Bhobe, Advocate for the petitioners.

Mr. F.E. Noronha, Advocate for the respondents.

CORAM : A.P. LAVANDE, J.

DATE : JANUARY 14, 2005.

P.C.

Heard Mr. Bhobe for the petitioners and Mr. Noronha for the respondents. By this petition, the petitioners who are the defendants before the trial Court, take exception to the Judgment and Order dated 20.7.2004, passed by the Addl. District Judge, Mapusa in Misc. Civil Appeal No.9/2004. The Misc. Civil Appeal was filed by the present petitioners against

the Order dated 28.1.2004, passed by the Civil Judge, Jr. Division, Mapusa in Civil Misc. Application No. 365/02/D in Regular Civil Suit No.185/02/D. The respondents herein have filed Regular Civil Suit No.185/02/D, seeking declaration of easementary right of way by prescription and also mandatory injunction. Along with the suit, the respondents also filed an application for temporary injunction against the present petitioners, which was allowed by the trial Court and the appeal preferred by the present petitioners was also dismissed by the appellate Court.

2. Assailing both these orders, the present petition has been filed. During the pendency of this petition, this Court, by order dated 5.11.2004, by way of an interim arrangement, directed that the wooden rafter fencing which is the subject-matter of the

dispute, be shifted inwards and towards the coconut tree, so as to make a clear pathway of 2 metres. According to Mr. Bhobe, this order has been complied with and a clear access of two metres is available to the respondents. Mr. Noronha, appearing on behalf of the respondents joins issue and states that at one point this pathway of two metres is not available and it is only 1.92 metres. Mr. Noronha, appearing for the respondents submits that the respondents will have no objection if the interim arrangement made is maintained till the disposal of the suit, however, without prejudice to the rights and contentions of the respondents in the suit.

3. In view of the statement made by learned Counsel for the respondents, it is ordered that the interim arrangement made in terms of

Order dated 5.11.2004 shall continue till disposal of the suit. Needless to mention that the respondents are at liberty to file appropriate proceedings to ensure that the order is duly complied with by the petitioners.

4. In the result, therefore, the impugned orders passed by the Courts below, stand modified in the aforesaid terms and the petition is disposed of accordingly.

A.P. LAVANDE, J.

ssm.